IN THE HIGH COURT OF JUDICATURE AT PATNA

CWJC No.2191 of 2002

BAGESHWAR PANDEY, son of Late Kapildeo Pandey, resident of village Bharohopur, PO & PS Ekma, District Saran ……. **Petitioner**

Versus

1. THE STATE OF BIHAR
2. The Commissioner, Saran Division, Chapra
3. The Additional Collector, Saran Division, Chapra
4. The Deputy Collector, Incharge Land Reforms, Chapra Sadar, Chapra
5. Dudhnath Singh, son of Late Kapildeo Singh, resident of village Bharhopur. PO & PS Ekma, District Saran ……..

Respondents

03- 14.11.2008 Heard Mr. Shashi Shekhar Dwivedi for the petitioner, Mr. Anwar Karim, learned JC to Standing Counsel no.V for respondent nos. 1, 2, 3 and 4, and Mr. Subodh Kumar Jha for respondent no.5 (Dudhnath Singh). It arises out of a proceeding under Section 48E of the Bihar Tenancy Act 1885 (hereinafter referred to as `the Act'). The petitioner is the landlord and respondent no.5 claims to be a bataidar. A brief statement of facts essential for the disposal of this writ petition may be indicated.

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2. Respondent no.5 filed an application under Section 48E of the Act before the learned Land Reforms Deputy Collector, Chapra, for declaration of his bataidari rights with respect to the following lands :-

Mouza	Khata No.	Survey No.	Rakwa
Bharhopur	203	3777	0-9-4 } 1-11 katha
		3557	0-12-2 }

The same was registered as Bataidari Case No.1/93-94 (Dudhnath Singh vs. Bageshwar Pandey). By order dated 12.3.96

(Annexure 7), the learned LRDC observed that respondent no. 5 herein has been able to establish a prima facie case. He, therefore, constituted a Board and appointed the Anchal Adhikari, Ekma, to be the Chairman. He further directed both the sides to nominate their panches. Respondent no.5 promptly nominated his two panches. The petitioner did not nominate his panches, and instead preferred CWJC No.7240 of 1996 (Bageshwar Pandey vs. The State of Bihar & Ors.), challenging initiation of the bataidari proceeding. The same was disposed of by order 22.7.99 (Annexure 6), directing the petitioner herein to approach the Board. The petitioner did not nominate his panches leading to the impugned order dated 19.6.98 (Annexure 1), whereby the application of respondent no.5 was allowed and his baskit rights in respect of 11 kathas of land have been declared.

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3. Aggrieved by this order, the petitioner herein preferred appeal which was registered as Bataidari Appeal no.6/98 (Bagewhwar Pandey vs. Dudhnath Singh). The same has been rejected by the impugned order dated 20.6.2000 (Annexure 2), and the order of the learned appellate authority was upheld leading to the present writ petition.

4. While assailing the impugned orders, learned counsel for the petitioner submits that he owns less than 10 acres of land and, therefore, the bataidari application is not maintainable in terms of Section 48C of the Act. He next submits that the Board was not properly constituted in the event of failure on the part of the petitioner to nominate his panches. The learned Collector under the Act ought to

have nominated panches to act for and on behalf of the petitioner failing which the entire proceedings are bad in law.

5. Learned counsel for respondent no.5 has supported the impugned orders. He submits that the petitioner constantly adopted dilatory tactics, never nominated panches, needlessly approached this Court, and he did not nominate his panches inspite of the opportunity afforded by this Court, leading to the impugned orders. He next submits that, as part of the dilatory tactics, the petitioner had filed an incompetent revision application before the Commissioner of Saran Division. He lastly submits that the proceeding is concluded by finding of facts.

6. We have perused the materials on record and considered the submissions of learned counsel for the parties. It is evident from the materials on record that the petitioner throughout adopted dilatory tactics so that respondent no.5 gives up his efforts out of sheer harassment and frustration. However, the perseverance of respondent no.5 did not permit him to give up his efforts. By order dated 12.3.96 (Annexure 7), the learned LRDC noted that the application of respondent no.5 disclosed a prima facie case and the matter had to be examined in detail. He had nominated the Anchal Adhikari, Ekma, as the Chairman of the Board and directed the parties to nominate their respective panches. Respondent no.5 promptly nominated his two panches but the petitioner failed to do so inspite of repeated opportunities and preferred an unwanted writ petition in this Court. The writ petition in substance was dismissed and he was directed to

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face the proceedings. Inspite of the opportunity given by this Court, the petitioner failed to nominate the panches. The Board felt helpless and returned the record without making efforts for compromise in the matter. On a perusal of the materials on record including the report of the Anchal Adhikari, the learned LRDC allowed the application of respondent no.5, upholding his bataidari rights. Therefore, the application of respondent no.5 is not hit by the bar engrafted in Section 48C of the Act.

He has also recorded the finding of fact that the petitioner is in occupation of 18 bighas of land. Respondent no.5 is in occupation of 11 kathas of land and is in continuous and peaceful possession. These findings of facts have been affirmed by the learned appellate authority. Learned counsel for respondent no.5 is, therefore, right in his submission that the proceeding is concluded by findings of facts.

7. The writ petition is dismissed.

(S K Katriar)

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